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Attorney for Defendant

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON PAUL ONIS KING KIVI,

Defendant.

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STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Case No. 3:05-cr-0106-JWS

**AFFIDAVIT OF COUNSEL**

ss.

M. J. Haden, being first duly sworn upon oath, deposes and states:

1. I am the attorney in the above-captioned case.
2. The court appointed me to represent Mr. Kivi in this matter on December 27, 2005.
3. The court set the pretrial motions deadline for January 17, 2006, and the trial for February 27, 2006.

4. Prior to January 17, 2006, I met with Mr. Kivi on several occasions to discuss the pretrial motions.

5. On January 17, 2006, Mr. Kivi filed a motion to suppress. An evidentiary hearing was held on January 30, 2006. The Magistrate Judge issued his report and recommendation on February 10, 2006. Mr. Kivi's objections are due on February 16, 2006. The government's response is due on February 22, 2006.

6. Following the evidentiary hearing, Mr. Kivi, who is being held in state custody, was transferred to Wildwood Correctional Center in Kenai, Alaska, on state charges in State v. Jason Kivi, 3KN-S05-1566.

7. Following Mr. Kivi's transfer to Kenai, I was out of my office on February 3, 2006, and February 7, 2006, to appear before Magistrate Terrence Hall in Fairbanks. I traveled to Seattle, Washington, on February 8<sup>th</sup> and 9<sup>th</sup> for oral argument in United States v. Bowman, No. 05-30106.

8. Upon my return, I was finally able communicate with Mr. Kivi by telephone. Mr. Kivi advised that he is represented in the state mater by attorney Peter Mysing.

9. On February 15, 2006, I contacted Mr. Mysing. Mr. Mysing advised that the state charges in 3KN-S05-1566 are identical to the federal charges and are based on the same alleged conduct. Mr. Mysing was unable to provide me with the next state court date.

10. The final pretrial conference in this matter is set for February 27, 2006. The trial is scheduled for the same day. Because Mr. Kivi was moved to Wildwood

Correctional Center in Kenai, I have been unable to discuss his trial options or seek some other acceptable resolution of this matter short of trial.

11. Accordingly, I am asking that his matter be set on for a scheduling and planning conference to continue the trial.

12. On February 15, 2006, I spoke with Assistant U.S. Attorney Bryan Schroder. Mr. Schroder indicated that the government does not oppose this request.

13. Time under the speedy trial rule would be excluded under this requests pursuant to 18 U.S.C. §§ 3161(h)(1)(D) and (F).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

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M. J. Haden

SUBSCRIBED AND SWORN to before me this 16th day of February, 2006.

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Notary Public in and for Alaska  
My Commission Expires: 3/14/2007